

**BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building
Fourth floor
Des Moines, Iowa 50319**

JOHN L CLAUSEN

Claimant,

and

IOWA WORKFORCE

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HEARING NUMBER: 11B-EUCU-00204

**EMPLOYMENT APPEAL BOARD
DECISION**

SECTION: 10A.601 Employment Appeal Board Review

D E C I S I O N

FINDINGS OF FACT:

The notice of hearing in this matter was mailed March 7, 2011. The notice set the hearings for March 26, 2011 at 9:00 a.m. and 9:05. a.m., to determine whether the claimant was ineligible for emergency unemployment compensation because he is eligible for regular unemployment benefits, and whether he owed an overpayment, respectively. The claimant contacted the agency to provide a telephone number at which he could be reached before the hearing, but did not record the control number because he was driving. On the day for the hearings, the claimant did not appear for or participate in the either hearing. The reason the claimant did not appear is because the administrative law judge did not call the number. When the claimant called the administrative law judge between 9:05 and 9:10 a.m., he was unable to get immediately through until 9:15, at which time the matter was closed.

The administrative law judge's decision was issued March 28, 2011, which determined that the claimant did not qualify for EUC benefits because he had not exhausted his claim for regular benefits from the State of Illinois, and owed an overpayment. The administrative law judge's decision has been appealed to the Employment Appeal Board.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 10A.601(4) (2005) provides:

5. Appeal board review. The appeal board may on its own motion affirm, modify, or set aside any decision of an administrative law judge on the basis of the evidence previously submitted in such case, or direct the taking of additional evidence, or may permit any of the parties to such decision to initiate further appeals before it. The appeal board shall permit such further appeal by any of the parties interested in a decision of an administrative law judge and by the representative whose decision has been overruled or modified

by the administrative law judge. The appeal board shall review the case pursuant to rules adopted by the appeal board. The appeal board shall promptly notify the interested parties of its findings and decision.

Here the claimant did not participate in the hearing through no fault of the claimant. The claimant complied with the notice instructions by providing a number at which he could be reached, but he was not called to participate. By the time he was able to reach the administrative law judge, the record was closed and the administrative law judge had already made his decision. Based on these circumstances, the claimant has provided good cause for his nonparticipation, which warrants a remand of this matter on that basis alone.

In addition, the Employment Appeal Board would note that the record as it stands is insufficient for the Board to issue a decision on the merits of the case. While the administrative law judge indicated that the claimant was still eligible for regular benefits from previous employment in the state of Illinois, there was nothing in the record to substantiate that statement, which has a direct bearing on the outcome of this matter. As the Iowa Court of Appeals noted in *Baker v. Employment Appeal Board*, 551 N.W. 2d 646 (Iowa App. 1996), the administrative law judge has a heightened duty to develop the record from available evidence and testimony given the administrative law judge's presumed expertise.

Since we do not know what evidence the administrative law judge relied on, and how the administrative law judge came by the same, the Board must remand this matter so for a complete record.

DECISION:

The decision of the administrative law judge dated March 28, 2011 is not vacated. This matter is remanded to an administrative law judge in the Workforce Development Center, Appeals Section, for a new hearing so that the claimant may avail himself of his due process right and for further development of the record consistent with this decision. The administrative law judge shall conduct a hearing following due notice, and issue a decision which provides the parties appeal rights.

John A. Peno

Elizabeth L. Seiser

DISSENTING OPINION OF MONIQUE F. KUESTER:

I respectfully dissent from the majority decision of the Employment Appeal Board; I would affirm the decision of the administrative law judge in its entirety.

Monique F. Kuester

AMG/fnv